

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MIROSLAVA LEWIS,

Plaintiff,

V.

VAIL RESORTS, INC.,

Defendant.

No. 2:23-cv-00812-RSL

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

“Confidential” material shall include the following documents and tangible things

STIPULATED PROTECTIVE ORDER

- 1
2023-04-00812 RSL

KEATING, BUCKLIN & MCCORMACK, INC., P.S.

ATTORNEYS AT LAW

801 SECOND AVENUE, SUITE 1210

SEATTLE, WASHINGTON, 9

PHONE: (206) 623-8861
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1 produced or otherwise exchanged: Stevens Pass 2019-2022 employee manuals, 2019-2022 lift
2 operations manuals, Stevens Pass 2021-22 employee welcome packet, and Stevens Pass 2021-22
3 lift operations training PowerPoint presentation.

4 3. SCOPE

5 The protections conferred by this agreement cover not only confidential material (as
6 defined above), but also (1) any information copied or extracted from confidential material; (2)
7 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
8 conversations, or presentations by parties or their counsel that might reveal confidential material.

9 However, the protections conferred by this agreement do not cover information that is in
10 the public domain or becomes part of the public domain through trial or otherwise.

11 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

12 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
13 or produced by another party or by a non-party in connection with this case only for prosecuting,
14 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
15 the categories of persons and under the conditions described in this agreement. Confidential
16 material must be stored and maintained by a receiving party at a location and in a secure manner
17 that ensures that access is limited to the persons authorized under this agreement.

18 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
19 ordered by the court or permitted in writing by the designating party, a receiving party may
20 disclose any confidential material only to:

21 (a) the receiving party’s counsel of record in this action, as well as employees
22 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

23 (b) the officers, directors, and employees (including in house counsel) of the
24 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
25 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
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1 designated.

2 (c) experts and consultants to whom disclosure is reasonably necessary for
3 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit

4 (d) the court, court personnel, and court reporters and their staff;

5 (e) copy or imaging services retained by counsel to assist in the duplication of
6 confidential material, provided that counsel for the party retaining the copy or imaging service
7 instructs the service not to disclose any confidential material to third parties and to immediately
8 return all originals and copies of any confidential material;

9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
11 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
12 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
13 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
14 under this agreement;

15 (g) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information.

17 4.3 Filing Confidential Material. Before filing confidential material or discussing or
18 referencing such material in court filings, the filing party shall confer with the designating party,
19 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
20 remove the confidential designation, whether the document can be redacted, or whether a motion
21 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
22 designating party must identify the basis for sealing the specific confidential information at issue,
23 and the filing party shall include this basis in its motion to seal, along with any objection to
24 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
25 followed and the standards that will be applied when a party seeks permission from the court to
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1 file material under seal. A party who seeks to maintain the confidentiality of its information must
2 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
3 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,
4 in accordance with the strong presumption of public access to the Court's files.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
7 or non-party that designates information or items for protection under this agreement must take
8 care to limit any such designation to specific material that qualifies under the appropriate
9 standards. The designating party must designate for protection only those parts of material,
10 documents, items, or oral or written communications that qualify, so that other portions of the
11 material, documents, items, or communications for which protection is not warranted are not
12 swept unjustifiably within the ambit of this agreement.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
14 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
15 unnecessarily encumber or delay the case development process or to impose unnecessary
16 expenses and burdens on other parties) expose the designating party to sanctions.

17 If it comes to a designating party's attention that information or items that it designated
18 for protection do not qualify for protection, the designating party must promptly notify all other
19 parties that it is withdrawing the mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this
21 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated or
22 ordered, disclosure or discovery material that qualifies for protection under this agreement must
23 be clearly so designated before or when the material is disclosed or produced.

24 (a) Information in documentary form: (e.g., paper or electronic documents
25 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial

1 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that
2 contains confidential material. If only a portion or portions of the material on a page qualifies for
3 protection, the producing party also must clearly identify the protected portion(s) (e.g., by
4 making appropriate markings in the margins).

5 (b) Testimony given in deposition or in other pretrial proceedings: the parties
6 and any participating non-parties must identify on the record, during the deposition or other
7 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
8 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
9 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
10 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
11 confidential information at trial, the issue should be addressed during the pre-trial conference.

12 (c) Other tangible items: the producing party must affix in a prominent place
13 on the exterior of the container or containers in which the information or item is stored the word
14 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
15 the producing party, to the extent practicable, shall identify the protected portion(s).

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
18 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
20 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
21 challenge a confidentiality designation by electing not to mount a challenge promptly after the
22 original designation is disclosed.

23 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
24 regarding confidential designations without court involvement. Any motion regarding
25 confidential designations or for a protective order must include a certification, in the motion or in
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1 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
2 conference with other affected parties in an effort to resolve the dispute without court action. The
3 certification must list the date, manner, and participants to the conference. A good faith effort to
4 confer requires a face-to-face meeting or a telephone conference.

5 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
6 intervention, the designating party may file and serve a motion to retain confidentiality under
7 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
8 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
9 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
10 other parties) may expose the challenging party to sanctions. All parties shall continue to
11 maintain the material in question as confidential until the court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
16 party must:

17 (a) promptly notify the designating party in writing and include a copy of the
18 subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to
20 issue in the other litigation that some or all of the material covered by the subpoena or order is
21 subject to this agreement. Such notification shall include a copy of this agreement; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued
23 by the designating party whose confidential material may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential

1 material to any person or in any circumstance not authorized under this agreement, the receiving
2 party must immediately (a) notify in writing the designating party of the unauthorized
3 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
4 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
5 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
6 Agreement to Be Bound" that is attached hereto as Exhibit A.

7 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
8 MATERIAL

9 When a producing party gives notice to receiving parties that certain inadvertently
10 produced material is subject to a claim of privilege or other protection, the obligations of the
11 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
12 provision is not intended to modify whatever procedure may be established in an e-discovery
13 order or agreement that provides for production without prior privilege review. The parties agree
14 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

15 10. NON TERMINATION AND RETURN OF DOCUMENTS

16 Within 60 days after the termination of this action, including all appeals, each receiving
17 party must return all confidential material to the producing party, including all copies, extracts
18 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
19 destruction.

20 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
21 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
22 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
23 work product, even if such materials contain confidential material.

24 The confidentiality obligations imposed by this agreement shall remain in effect until a
25 designating party agrees otherwise in writing or a court orders otherwise.
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 SALTZ MONGELUZZI BENDESKY, P.C.
3 *Permission to sign given electronically*

4 DATED: November 21, 2023

5 /s/ Robert Zimmerman
6 DEBORAH ALEXANDER, WSBA No.
7 21505
8 LARRY BENDESKY *Pro Hac Vice*
9 ROBERT W. ZIMMERMAN *Pro Hac Vice*
10 MICHAEL T. BENZ *Pro Hac Vice*
11 11900 Northeast 1st Street, Suite 300
12 Bellevue, WA 98005
13 *Attorneys for Plaintiff*

14 DATED: November 21, 2023

15 KEATING, BUCKLIN & McCORMACK,
16 INC., P.S.

17 

18 Richard B. Jolley, WSBA #23473
19 Attorneys for Defendant Vail Resorts, Inc.
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22 Phone: (206) 623-8861
23 Fax: (206) 223-9423
24 Email: rjolley@kbmlawyers.com

25 PURSUANT TO STIPULATION, IT IS SO ORDERED

26 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production
27 of any documents, electronically stored information (ESI) or information, whether
inadvertent or otherwise, in this proceeding shall not, for the purposes of this proceeding or
any other federal or state proceeding, constitute a waiver by the producing party of any
privilege applicable to those documents, including the attorney-client privilege, attorney
work-product protection, or any other privilege or protection recognized by law. This Order

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30 1193-00014/645164

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1 shall be interpreted to provide the maximum protection allowed by Fed. R. Evid. 502(d).
2 The provisions of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended
3 to or shall serve to limit a party's right to conduct a review of documents, ESI or
4 information (including metadata) for relevance, responsiveness and/or segregation of
5 privileged and/or protected information before production. Information produced in
6 discovery that is protected as privileged or work product shall be immediately returned to
7 the producing party.

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DATED: November 22, 2023



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11 Robert S. Lasnik
12 United States District Court Judge
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